

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 02-0522P**

**Withholding Tax  
For December 31, 2001**

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**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer filed its DB020W-NR and payment late and was assessed a late payment penalty. In a letter dated June 14, 2002, taxpayer protests the penalty assessed because it had "paid an extension payment for 2001 for composite tax of \$8,000 on April 15, 2002" and subsequently realized the extension payment was actually due on March 15, 2002. Taxpayer states that it estimated the composite tax for 2001 to be \$8,000, however, since the 2001 Form IT-65 had not been prepared (on extension until October 15, 2002), the taxpayer did not know the exact amount of tax due for 2001. Taxpayer requests a penalty waiver because it should not have been issued a notice for late payment of the extension until the actual tax was determined.

I. **Tax Administration** – Penalty

**DISCUSSION**

Taxpayer was assessed a ten percent (10%) late payment penalty because it paid its tax after the due date of the return.

Taxpayer argues that it remitted \$8,000 in withholding taxes and found that the tax was actually less when it filed its IT-65 return. The total composite tax on Schedule IT-65COMP was less than the \$8,000 remitted.

Form DB020W-NR is used when a taxpayer has not established a separate nonresident withholding account to remit Indiana state income tax withholding on annual income distributions to nonresident shareholders. If an entity pays or credits amounts to its nonresident shareholders, partners or beneficiaries on time each year, the withholding payment is due on or before the fifteenth day of the third month after the end of the taxable year; i.e. March 15. It is noted that this form establishes a separate nonresident withholding account.

Form WH-3 (annual withholding reconciliation and transmittal form) and state copies of Form WH-18 (Indiana miscellaneous withholding tax statement) must be filed annually on or before February 28. The Department permits an entity paying or crediting amounts to its nonresidents only one time each year, an extension of time to file Form WH-3 until March 15. However, the payment of withholding tax on the one time annual distribution is required to have been remitted (and the withholding statement provided to the payee) 2 ½ months after the end of the entity's taxable year. An extension of time to file Form WH-3 may be requested if the information on the distributive share of income reportable on Form WH-18 is not available by the due date. However, an extension of time to file Form WH-3 does not extend the time to pay withholding tax due on Form DB020W-NR. Taxpayer has not submitted the WH-3 or WH-18 forms to date.

Taxpayer states that it estimated the composite tax for 2001 to be \$8,000, however, since the 2001 Form IT-65, Indiana Partnership Return, has not been prepared (on extension until October 15, 2002), the taxpayer does not know the exact amount of tax due for 2001.

DBO20W-NR is not an estimated payment voucher but a tax return. The tax return is used to report withholding on annual income distributions to nonresident shareholders and is due no later than March 15. The payment in the amount of \$8000 was clearly late.

The taxpayer credited the \$8,000 on its IT-65 (Indiana Partnership Return) which resulted in a refund because it overpaid its DB020W-NR account. Any payment made after the original due date must include penalty and interest because the filing due date for the partnership return is different than the payment due date of the income tax withholding and composite adjusted gross income tax on nonresident partners.

Taxpayer has not provided reasonable cause for its late filing and payment.

### **FINDING**

Taxpayer's protest is denied.